IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 12430 of 1994

Between:

1 Panthala Sri Ramulu S/o.P.Venkanna
R/o.Pragadapalli Polavaram Mandal
West Godavari Dist.
2 Panthala Venkateswar Rao S/o.P.Venkanna
R/o.Pragadpalli Polavaram Mandal
W.G.Dist.
3 Bongu Satyanarayana S/o.Dharmaraju
R/o.Pragadapalli Polavaram Mandal
West Godavari Dist.
4 Panthala Radha Krishna S/o.P.Venkanna
R/o.Pragadapalli Polavaram Mandal
West Godavari Dist.

..... PETITIONERS

AND

1 Govt.of A.P Rep.by its Secretary,Social Welfare (Tribal Welfare) Dept
Secretariat Buildings Hyderabad.
2 The Agent to the Govt (Dist Collector)
West Godavari Dist Eluru.
3 The Special Deputy Collector (Tribal Welfare)
Eluru.
4 Pattam Pandayya S/o.Venkanna
R/o.Kommugudem H/o.Vinjaram
Polavaram Mandal W.G.Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records connected with Govt.Memo.No.2279/F1/81-7, dated 8-9-1993 from the Govt of A.P. Social Welfare (F) Dept and quash the same by the issuance of a Writ of Certiorari or any other appropriate writ, order or direction as this Hon'ble

Court may deem fit and proper.

Counsel for the Petitioner: MR.A.RANGACHARYULU

Counsel for the Respondent NOS.1 TO 3 GP FOR SOCIAL WELFARE

Counsel for the Respondent No.4: NONE APPEARED

The Court made the following:

THE HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT PETITION No. 12430 OF 1994

ORDER:

This Writ Petition is filed, questioning the orders passed by the first respondent-Government in Memo No. 2279/F1/81-7, dated 08-09-1993, in exercise of revisional powers under A.P. Scheduled Areas Land Transfer Regulation 1/1970, confirming the order for eviction of the petitioner from the land in R.S.No. 66, admeasuring Ac.2.28 cents situated in Pragadapalli village, Polvaram Mandal of West Godavari District.

On a complaint filed by the Special Deputy Tahsildar, Tribal Welfare, Eluru, under Section 3(2)(a) of the A.P. Scheduled Areas Land Transfer Regulation 1/1959, as amended by Regulation 1/1970, proceedings are initiated against the petitioner, stating that the scheduled mentioned land, belong to the fourth respondent herein, is in possession and enjoyment of the petitioner, who is a non-tribal, by virtue of obtaining sale transaction from the grand father of the fourth respondent, who is a tribal. When a notice was issued under Section 3(2)(a) of the A.P. Scheduled Areas Land Transfer Regulation 1/1970, the petitioner herein has filed explanation stating that he is the owner and possesser of the land by virtue of registered sale deed dated 8-4-1947 and the same is not in R.S.No. 66. Before the Primary authority, the predecessor in title of the petitioner as well as the fourth respondent were examined as P.W.1 and R.W.1

respectively. The Special Deputy Collector, with reference to the pleadings and evidence on record, has categorically recorded the finding that the scheduled mentioned land claimed by the fourth respondent herein is different from the land claimed by the petitioner under Exs.B.1 to B5. The Primary authority, in the order of eviction, has recorded the finding to the following effect:

> "In the absence of any explanation, it cannot be held that the land mentioned in Ex.B.1 which is described as Zeroyati land is the same land that is mentioned in the petition schedule"

In spite of recording the said finding, the primary authority has passed an order of eviction on the sole ground that the petitioner has failed to prove that the land purchased by him on 8-4-1947 through Ex.B.1 was the petition schedule land. While drawing adverse presumption against the petitioner, under Section 3(2)(a) of the Regulation, the primary authority has passed the order of eviction and the said order is confirmed on appeal and revision.

Though petition schedule land is described as land in R.S.No. 66, admeasuring Ac.2.28 cents, situated in Pragadapalli village, Polavaram Mandal of West Godavari district, but no finding is recorded by the primary authority, i.e. the Special Deputy Collector, with regard to transfer of the said land in favour of the petitioner, in contravention of the A.P. Scheduled Areas Land Transfer Regulation 1/1959, as amended by Regulation1/1970. Once a finding is recorded to that effect that the petitioner's claim and possession with regard to land covered under Exs.B1 to B.5 is different from the land, which is claimed by the fourth respondent, and, in absence of recording the finding with regard to transfer of petition schedule land in violation of the provisions under Regulation 1/59, as amended by Regulation 1/1970, no order of eviction can be passed. There is absolutely no basis in the order of eviction passed by the primary authority, which is confirmed by the appellate and revisional

authorities. In that view of the matter, the order of eviction, as confirmed by the revisional authority in Memo No. 2279/F1/81-7, dated 8-9-1993 is hereby set aside.

The Writ Petition is accordingly allowed. No order as to costs.

JUSTICE R. SUBHASH REDDY

Dated: 22-02-2005

DR/Msnr.

That Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on this Tuesday, the twenty second day of February, Two thousand and five.

To

1 The Secretary, Govt. of A.P., Social Welfare (Tribal Welfare) Dept
Secretariat Buildings Hyderabad.
2 The Agent to the Govt (Dist Collector)
West Godavari Dist Eluru.
3 The Special Deputy Collector (Tribal Welfare)
Eluru.
4 2 CCs to Government Pleader for Social Welfare,

High Court Buildings, Hyderabad. (OUT)

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